

In the Matter of Merchant Mariner's Document No. Z-805317 and all
other Seaman Documents
Issued to: JOHN F. WILKINS

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1043

JOHN F. WILKINS

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 23 September 1957, an Examiner of the United States Coast Guard at New York, New York suspended Appellant's seaman documents upon finding him guilty of misconduct. The specification alleges that while serving as a messman on board the American USNS CUMBERLAND under authority of the document above described, on or about 18 July 1957, Appellant assaulted crew member Edgar Johnson with a dangerous weapon, to wit: a knife, inflicting bodily injury, said vessel being at sea.

At the beginning of the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Although advised of his right to be represented by counsel of his own choice, Appellant elected to waive that right and act as his own counsel. He entered a plea of not guilty to the charge and specification.

The Investigating Officer and Appellant made their opening statements. The Investigating Officer introduced in evidence testimony of four crew members of the USNS CUMBERLAND (including the Chief Officer and the person allegedly assaulted), the knife used by Appellant and a certified extract from the Official Logbook of the vessel for 18 July 1957. In defense, Appellant offered in evidence his own testimony as to the events in question.

At the conclusion of the hearing, the oral arguments of the Investigating Officer and Appellant were heard. The Examiner then announced the decision in which he concluded that the charge and specification had been proved. An order was entered suspending all documents, issued to Appellant, for a period of twenty-four months, the first twelve months to be outright suspension and the last twelve months on eighteen months' probation.

The decision was mailed on 24 September 1957. Appeal was timely filed on 23 October 1957.

FINDINGS OF FACT

On 18 July 1957, Appellant was serving as pantryman on board the American USNS CUMBERLAND and acting under authority of his Merchant Mariner's Document No. Z-805317 while the ship was at sea.

Appellant and crew messman Edgar Johnson, had had several arguments during the course of the voyage. On 18 July 1957, Johnson repeatedly annoyed Appellant by stamping on his feet. The incident in question started when Appellant was seated in the pantry dressing grapefruit with a small, sharp knife. Johnson entered the pantry, stepped on Appellant's foot, shoved him addressed him with a term of opprobrium and continued on into the crew's mess room. Already angered by the earlier actions of Johnson, Appellant followed with the knife in his hand. He swung at Johnson's back with the knife, tearing his jacket and causing a 15-inch superficial cut down his back. Appellant inflicted another cut above Johnson's knees while struggling with him. The Master and Chief Officer separated the two seamen. Appellant was hysterical as he expressed sorrow for what he had done.

After receiving first aid, Johnson returned to duty without time lost from his job. Prior to this incident, Appellant had a good reputation on board and subsequently he did good work. He has no prior record.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is based on the grounds that the Examiner failed to give consideration to the mitigating circumstances of this case; and in view of the immediate remorse of the Appellant, the order of the Examiner was excessively severe.

OPINION

The victim in this case was generally a bully and the initial aggressor in this incident. He jostled Appellant to such an extent as to justify some degree of self-defense or immediate retaliation. Having provoked Appellant to anger, it cannot be said that Johnson's attempted withdrawal from the scene while Appellant was thus aroused to heat of passion caused the actions of the Appellant to constitute an unprovoked attack. However, in responding by cutting Johnson twice with a knife, Appellant was guilty of using excessive force even though he may have had reason to believe, as he testified, that Johnson had a knife or razor on his person. The

fact that Appellant lost control of himself and was hysterical with anger is no justification for his conduct.

CONCLUSION

The Examiner has given adequate consideration to the mitigating circumstances of this case; he did not order the revocation of Appellant's merchant mariner's document which is customary in such a serious case. In the interest of promoting safety at sea, the order of the Examiner suspending the Appellant's documents was proper and will be sustained.

ORDER

The Order of the Examiner dated at New York, New York, on 23 September 1957, is AFFIRMED.

A. C. Richmond
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D.C., this 9th day of June, 1958.